IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/11/2004

CORAM

THE HON'BLE MR. JUSTICE P.K. MISRA
AND
THE HON'BLE MR. JUSTICE T.V. MASILAMANI

C.M.A.NO.197 OF 1996
AND
CROSS OBJECTION NO.1 OF 2000

C.M.A.NO.197 of 1996

United India Insurance Co. Ltd.,
Mosque Street,
Tindivanam 604 001. .. Appellant

-Vs-

1. R. Sathiyanarayanan,
S/o. Rajaram

2. S. Gopalakrishnan,
S/o.R. Subramanaian .. Respondents

Cross Objection No.1 of 2000

R. Sathiyanarayanan,
S/o. Rajaram .. Cross Objector

Vs.

1. United India Insurance Co. Ltd.,
Mosque Street,
Tindivanam 604 001.

2. S. Gopalakrishnan,
S/o.R. Subramanaian .. Respondents

Civil Miscellaneous Appeal filed under Order 41 Rule 22 of the Code of Civil Procedure against the judgment and decree dated 22.6.1995 made in MCOP.No.510 of 1993, on the file of Subordinate Judge, Cuddalore.

!For Appellant : Mr.P. Sukumar

^For Respondent-1

and Cross Objector : Mrs. Chitra Sampath

:J U D G M E N T

P.K. MISRA, J

The Claim Petition was filed by the present Respondent No.1, on the following allegations :-
The Claimant was the pillion rider on a scooter bearing Registration No.PYR 1446 which was proceeding towards Cuddalore from Pondicherry on 17.3.1993. Lorry bearing Registration No.TNV 9787 belonging to the present Respondent No.2 was coming from opposite direction and hit against the scooterist. The claimant was thrown out of the scooter and sustained several injuries including multiple injuries in his right forearm as well as fracture of both bones of his right leg. He was treated in Government Hospital, Cuddalore initially and subsequently at Madras Institute of Orthopaedics and Traumatology as well as Vijaya Health Centre, Madras. He had undergone treatment as inpatient at Vijaya Health Centre, Madras for 45 days and underwent surgery of both the bones of his forearm on 20.3.1993 and ORIF Olecranon on 2 5.3.1993 and Nailing of tibia on 6.4.1993. Subsequently, he continued treatment as out-patient from 29.4.1993 to 16.6.1993 and was readmitted as in-patient on 10.6.1993 for bone grafting and continued as in-patient till 24.6.1993. It was also indicated in the claim petition that he was continuing to undergo treatment even at the time of filing of the claim petition, i.e., 19.7.1993. The claimant was a National athlete and had secured many medals in school, college, State and National level competitions. Even though the claimant had estimated a sum of Rs.10 lakhs towards loss of earning, disability, loss of earning capacity, pain and sufferings, loss of his career and for other incidental expenditure, he had restricted his claim to Rs.7 lakhs.

2. The present appellant, which was the Respondent No.2 in the Claim Petition, filed objection denying the allegations in the claim petition. It was stated that the accident occurred due to negligent driving of the scooterist. The owner of the offending vehicle, arrayed as Respondent No.1 in the claim petition, adopted the objection filed by the Insurer. As a matter of fact, the Insurer and the owner were represented through the very same Counsel before the Claims Tribunal.

3. The Tribunal found that the accident occurred due to rash and negligent driving of the driver of the lorry and awarded a sum of Rs.4,95,000/- as compensation payable by the lorry owner and consequently the Insurer. While calculating the compensation, the Tribunal came to the conclusion that a sum of Rs.2,95,000/- was payable towards permanent disability, loss of earning, loss of pain and sufferings, etc., and a sum of Rs.2,00,000/- was payable towards medical expenditure incurred, travelling expenses for attending hospitals and for the expenditure towards nutritious food.

4. The aforesaid award is challenged by the Insurance Company in the present appeal . The main grounds of attack in the appeal filed by the Insurance Company relate to questions of negligence and quantum. An omnibus ground has been taken in the Memorandum of Appeal to the effect that The decree and award of the Tribunal is contrary to law, weight of evidence and probabilities of the case.

5. In the cross objection filed on behalf of the claimantrespondent, the main contention is to the effect that though the Tribunal has granted a sum of Rs.2 lakhs towards medical expenditure and other related expenses, no amount has been awarded towards future expenditure to be incurred by the claimant-respondent on account of his continued treatment. It claimed that the Tribunal should have awarded the entire sum of Rs.7 lakhs claimed by the claimant.

6. At the time of hearing of the appeal, learned counsel appearing for the Insurance Company was constrained to submit that the Insurance Company had no right to challenge the award on merits, that is to say, on the questions of negligence and quantum in view of the fact that permission as envisaged under Section 170 of the Motor Vehicles Act had not been obtained from the Tribunal to contest the case on merit. Therefore, he has submitted that the appeal filed by the Insurance Company was not maintainable in law, and as such, the cross objection filed by the claimant-respondent is also liable to be dismissed as not-maintainable.

7. It is the latter question which has engaged the attention of this court at the time of hearing. The main question which arises in the present appeal for consideration is as to whether in the appeal filed by the Insurance Company challenging the award mainly on the ground of negligence or

quantum, even though specific permission under Section 170 of the Motor Vehicles Act had not been obtained, crossobjection can be filed by the claimant-respondent.

8. In law, a right is available to the Insurance Company to file appeal as a person aggrieved. However, if the Insurance Company has not obtained leave of the Court as envisaged under Section 170 of the Motor Vehicles Act, such appeal has to be confined to the grounds indicated in Section 149 of the Motor Vehicles Act and it is not open to the Insurance Company to challenge the findings of the Tribunal on the question of negligence or on the question of quantum. On the other hand, if permission is obtained, the Insurance Company in its appeal can raise all grounds including the grounds relating to negligence and quantum. However, merely because in its appeal the Insurance Company cannot succeed on the grounds relating to negligence and quantum and such appeal is liable to be rejected, can it be said that the appeal filed by the Insurance Company is not maintainable in the eye of law so as to preclude the filing of cross-objection by claimantrespondent ?

9. The expression not maintainable is a verbal cast of many colours. In a very generic sense such expression may mean whatever is not

□tenable□ is not maintainable. In a restricted sense, the expression □not maintainable□ means something which is not contemplated in law or non-existent in the eye of law.

10. In the context of considering the question as to whether a cross objection is permissible or not, the expression □not maintainable□ has to be construed in a restricted sense and not in a generic sense. To illustrate this point, the learned counsel has submitted that if the award is less than Rs.10,000/-, Section 173(2) of the Motor Vehicles Act itself contemplates that no appeal can be filed. That is an instance where no appeal is contemplated in law and in that sense it can be said that the said appeal is "non-existent" in the eye of law or such appeal is □not maintainable□. There is no specific embargo envisaged in the Act prohibiting an Insurance Company from filing an appeal. The only restriction is that the Insurance Company in its appeal can only urge certain questions as envisaged under section 149 of the Motor Vehicles Act. Therefore, where the Insurance Company files an appeal and urges the questions which are relatable to question of negligence and quantum, the appeal is liable to be dismissed because those questions cannot be raised by the Insurance Company, but strictly speaking it cannot be said that the appeal itself is □not maintainable□. In other words, even though the appeal continues to be an appeal in the eye of law, the grounds available to be raised are restricted and the grounds relating to question of negligence or quantum cannot be pressed into service in support of the appeal and as such, such grounds are to be rejected.

11. This question can be viewed from another angle. Under Section 100 C.P.C., a second appeal can be filed raising substantial questions of law and even if such second appeal is admitted, subsequently, at the instance of the respondents, the High Court can come to a conclusion that such appeal does not involve any substantial questions of law. However, it cannot be said that the second appeal itself is □ not maintainable□. Such second appeal is liable to be rejected because the questions raised are questions of fact and do not involve any substantial questions of law. In other words, even though there is an appeal in the eye of law, such appeal is liable to be dismissed because it does not involve any substantial question of law. Even though loosely it may be described as such appeals are □not maintainable□, in strict sense, such appeals are appeals in the eye of law, which give rise to a corresponding right to the respondent to file crossobjection. In such cases, filing of appeal is not prohibited. An appeal can be filed, but, since the questions raised in such appeal are not substantial questions of law, such appeal is bound to be dismissed on merit. Similarly where in the appeal filed by the Insurance Company the questions raised relate to the question of negligence or quantum, such appeal is liable to be dismissed not bec ause the appeal is □ not maintainable□ in the strict sense, but because the Insurance Company has no right to raise those questions relating to negligence or quantum in the absence of specific permission under Section 170 of the Motor Vehicles Act. Viewed from this angle, we are of the opinion that the cross-objection filed by the Respondent No.1 is maintainable.

12. Learned counsel appearing for the Insurance Company has placed reliance upon the Division Bench decision of this Court reported in

II(2003) ACC 548 (UNITED INDIA INSURANCE COMPANY LIMITED & ANOTHER v. M.G.I SUBRAMANIAN AND OTHERS). In the said decision, the High Court without any discussion, simply observed that the appeal filed by the Insurance Company is "not maintainable" in vie w of the decision of the Supreme Court in JT (2002) 7 SC 251 (NATIONAL INSURANCE COMPANY v. NICOLLETTA ROHTAGI & OTHERS), and further observed :

" 2. . . . in the light of various decisions of the Supreme Court Pannalal's case, etc., AIR 1963 SC 1516, the cross-objection by the claimants in this appeal filed by the Insurance Company also cannot be maintained."

13. It is of course true that in JT (2002) 7 SC 251 (cited supra) and also in several decisions of the Supreme Court such as in (2000)5 SCC 113 (RITA DEVI AND OTHERS v. NEW INDIA ASSURANCE CO. LTD. AND ANOTHER), it has been observed that without taking recourse to the procedure contemplated under Section 170 of the Motor Vehicles Act, appeal filed by the Insurance Company challenging the award on merit, that is to say, on the questions of negligence and quantum, is not maintainable and such appeal shall liable to be dismissed. However, those observations were made in the context of considering the validity of the contentions raised by the Insurance Company challenging the award on merit.

Similarly, in (1998) 3 SCC 140 (SHANKARAYYA AND ANOTHER v. UNITED INDIA INSURANCE CO. LTD. AND ANOTHER), it was observed that in the absence of permission under Section 170, the "'Insurance Company' was not entitled to file an appeal on merits of the claim ..."

In (2000)4 SCC 130 (CHINNAMA GEORGE AND OTHERS v. N.K. RAJU AND ANOTHER), it was observed as follows :-

"8. If none of the conditions as contained in sub-section (2) of Section 149 exist for the insurer to avoid the policy of insurance he is legally bound to satisfy the award. He cannot be a person aggrieved by the award. In that case the insurer will be barred from filing any appeal against the award of the Claims Tribunal."

14. In all these cases, the Supreme Court was concerned with the question as to whether the Insurance Company can question the award of the Tribunal on merit and it has been consistently held that the Insurance Company has no such right to impugn the award on merit unless such Insurance Company is permitted to contest the case on merit by following the procedure contemplated under Section 170 of the Motor Vehicles Act. There cannot be any quarrel with the aforesaid well settled principle. In some of the decisions it has also been described that such appeal by the Insurance Company is not maintainable in a rather broad or elastic sense, but in none of these decisions, the question as to whether a cross-objection can be filed by a claimant in such appeal, had arisen. The expression that such appeal is "not maintainable" used in such decisions has to be understood in the context in which those questions arose in such cases. The Supreme Court was considering the right of the Insurance Company to raise those grounds in the appeal filed by the Insurance Company. However, whether the cross-objection filed by the

claimant/respondent could be decided on merit, even if such appeals were to be dismissed on the ground that the Insurance Company had no right to prefer appeal on those grounds, was not the subject matter of any of the decisions of the Supreme Court.

15. The ratio of a decision is to be understood by going through the entire decision in the context in which observations are made and some expressions used in a decision are not be interpreted as if those expressions are contained in a Statute itself.

16. There is a fine distinction between an appeal which is not at all contemplated in law and an appeal though contemplated, is available only on certain grounds.

17. In AIR 2003 SC 1515 (MUNICIPAL CORPORATION OF DELHI AND OTHERS v. INTNL. SECURITY AND INTELLIGENCE AGENCY LTD.,), the Supreme Court posed the question as to whether the cross objection may be heard and decided on merits though the appeal by reference to which crossobjection has been filed is itself dismissed as incompetent. It was observed as follows :-

 24. The original appeal filed by the respondents herein was found to be not maintainable as not covered by any of the clauses (i) to (vi) of sub-section (1) of Section 39 of the Act. It was dismissed as incompetent. The question of the memo of appeal filed in the High Court by the appellants herein being treated as cross-objection and being taken up for hearing on merits does not arise. Independently treated as an original appeal the same was held to be hopelessly barred by time as the delay was not explained satisfactorily. On this aspect we are not persuaded to take a view different from the one taken by the High Court. The appeal filed in the High Court by the appellants herein has been rightly held liable to be dismissed as time-barred and is not available to be heard and decided as cross-objection in view of the original appeal filed in the High Court by the respondents herein having failed as incompetent.
(Emphasis added)

The aforesaid observation makes it clear that the appeal as such was not coming within the provisions, and therefore, not maintainable. The ratio of the aforesaid decision cannot be applied to the present case to hold that the cross objection is not maintainable.

18. The next contention of the learned Counsel for the appellant is that the cross objection is essentially against the co-respondent and is not maintainable. He has relied upon the decision reported in AIR 1963 SC 1516.

19. In AIR 1988 SC 54 (MAHANT DHANGIR AND ANOTHER v. SHRI MADAN MOHAN AND OTHERS), while considering the scope of a cross-objection against a co-respondent, it was observed as follows :-

 12. Generally, the cross-objection could be urged against the appellant. It is only by way of exception to this general rule that one

respondent may urge objection as against the other respondent. The type of such exceptional cases are also very much limited. We may just think of one or two such cases. For instance, when the appeal by some of the parties cannot effectively be disposed of without opening of the matter as between the respondents inter se. Or in a case where the objections are common as against the appellant and corespondent. The Court in such cases would entertain cross-objection against the co-respondent. The law in this regard has been laid down by this Court as far back in 1964 in Panna Lal v. State of Bombay, 1964(1) SCR 980 at p.991 : (AIR 1963 SC 1516 at p.1520). After reviewing all the decisions of different High Courts, there this Court observed:

 In our opinion, the view that has now been accepted by all the High Courts that O.41, R.22 permits as a general rule, a respondent to prefer an objection directed only against the appellant and it is only in exceptional cases, such as where the relief sought against the appellant in such an objection is intermixed with the relief granted to the other respondents, so that the relief against the appellant cannot be granted without the question being reopened between the objecting respondent and other respondents, that an objection under Or.41, R.22 can be directed against the other respondents is correct. Whatever may have been the position under the old S.561 the use of the word cross -objection in O.41, R.22 expresses unmistakably the intention of the legislature that the objection has to be directed against the appellant. As Rajamannar, C.J. said in Venkateswaru v. Ramamma, ILR (1950) Mad 874 L: (AIR 1950 Mad 379)(FB) : The legislature by describing the objection which could be taken by the respondent as a cross-objection must have deliberately adopted the view of the other High Courts. One cannot treat an objection by a respondent in which the appellant has no interest as a cross-objection. The appeal is by the appellant against a respondent, the cross-objection must be an objection by a respondent against the appellant. We think, with respect, that these observations put the matter clearly and correctly. That the legislature also wanted to give effect to the views held by the different High Courts that in exceptional cases as mentioned above an objection can be preferred by a respondent against co-respondent is indicated by the substitution of the word appellant in the third paragraph by the words the party who may be affected by such objection.

Ultimately, the Supreme Court also approved the opinion of the High Court in the said case that the cross-objection was not maintainable against the co-respondent. However, the Supreme Court proceeded to examine the applicability of Order 41, Rule 33, and then observed :-

15. But that does not mean, that the Math should be left without remedy against the judgment of learned single Judge. If the crossobjection filed under R.22 of O.41, C.P.C. was not maintainable against the co-respondent, the Court could consider it under R.33 of O.41, C.P.C. Rule 22 and R.33 are not mutually exclusive. They are closely related with each other. If objection cannot be urged under R.22 against co-respondent, R.33 could take over and come to the rescue of the objector. The appellate court could exercise the power under R.33 even if the appeal is only against a part of the decree of the lower court. The appellate court could exercise that power in favour of all or any of the respondents although such respondent may

not have filed any appeal or objection. The sweep of the power under R.33 is wide enough to determine any question not only between the appellant and respondent, but also between respondent and co-respondents. The appellate court could pass any decree or order which ought to have been passed in the circumstances of the case. The appellate court could also pass such other decree or order as the case may require. The words as the case may require used in R.33 of O.41 have been put in wide terms to enable the appellate court to pass any order or decree to meet the ends of justice. What then should be the constraint ? We do not find many. We are not giving any liberal interpretation. The rule itself is liberal enough. The only constraints that we could see may be these : That the parties before the lower court should be there before the appellate court. The question raised must properly arise out of judgment of the lower court. If these two requirements are there, the appellate court could consider any objection against any part of the judgment or decree of the lower court,. It may be urged by any part to the appeal. It is true that the power of the appellate court under R.33 is discretionary. But it is a proper exercise of judicial discretion to determine all questions urged in order to render complete justice between the parties. The court should not refuse to exercise that discretion on mere technicalities.

20. There are several decisions of different High Courts including the Madras High Court arising out of Claim Cases under the Motor Vehicles Act to the effect that the amount of compensation can be enhanced by filing cross objection in the appeal filed by the Insurer or by exercising power under Order 41 Rule 33 even in the absence of Cross Objection.

21. In 2000 (1) CTC 225 (THE NATIONAL INSURANCE COMPANY LIMITED, MADRAS v. R. RANI AND ANOTHER), it was observed that where the Insurer was challenging the award on merit, even if such appeal is liable to be dismissed in the absence of permission under Section 170 of the Motor Vehicles Act, the Cross Objection by the claimant-respondent can be decided on merit.

22. In II (2003) ACC 59 (DB) (ORIENTAL INSURANCE COMPANY LTD & 4 OTHERS v. C. SANTHAMANI & 8 OTHERS), the Tribunal awarded Rs.4,18,000/- as compensation payable and had directed the Insurance Company to pay the entire amount. In the appeal filed by the Insurance Company, the contention was to the effect that the liability of the Insurance Company was restricted to Rs.1,50,000/-. The cross-objection was filed by the claimants / respondents claiming a further sum of Rs.1,00,00 0/-. It was held that the liability of the Insurance Company was limited to Rs.1,50,000/- and the balance was payable by the insurer. Regarding the cross objection, it was observed :-

"8. . . . As rightly pointed out by Mr.K. Mohan Ram, learned Counsel for cross-objectors, though the Insurance Company has mainly contended their limited liability in terms of Section 92(2) of the Motor Vehicles Act, 1939, a perusal of their grounds of appeal shows that they challenged the entire award of compensation, including interest, as directed by the Tribunal and after arriving the value of the appeal, paid Court-fee for the entire amount. It is clear that the entire amount as awarded by the Tribunal

including interest and costs are being questioned in this appeal. In this regard, it is relevant to refer a decision of the Supreme Court in M/s. Bihar Supply Syndicate v. Asiatic Navigation, I(1993)ACC 594(SC)=AIR 1993 SC 2054. In the said decision, Their Lordships, after referring to Order 41 Rule 33, Civil Procedure Code, have observed thus : (para 29)
"29. Really speaking the rule is in three parts. The first part confers on the Appellate Court very wide powers to pass such orders in appeal as the case may require. The second part contemplates that this wide power will be exercised by the Appellate Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection. The third part is where there have been decrees in cross-suits or where two or more decrees are passed in one suit, this power is directed to be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees."

In the light of the decision of the Supreme Court, more particularly in view of the fact that the entire amount is being questioned in the memorandum of appeal by paying requisite Court-fee (though in the argument they confined to their liability to the extent of Section 92(2) of the Motor Vehicles Act, 1939), in view of the peculiar circumstances of the case, we hold that the present cross-objection is maintainable and we intend to consider the merits of the same in the subsequent paragraph."
(Emphasis added)

23. In 2004 ACJ 1086 (PALLAVAN TRANSPORT CORPORATION LTD. V. M ANBUMANI AND OTHERS), the appeal was filed by the owner (Transport Corporation) challenging the award, but no cross-objection had been filed by the claimant/respondent. By invoking power under Order 41 Rule 33, the Division Bench enhanced the compensation amount. It was observed :-

"6. It is unfortunate that the claimants have not filed crossobjections. But at the same time, it is not as if this court is helpless and this court can certainly invoke its powers conferred under Order 4 1, rule 33 of the Code of Civil Procedure since the court in deciding these matters, should remember that the compensation awarded should not be inadequate, neither should be unreasonable, excessive nor deficient. In this case, this court is of the view that the compensation that has been fixed by the Tribunal is on the lower side." (Emphasis added)

24. In 2001 ACJ 1636 (DISTRICT COLLECTOR, PUDUKOTTAI AND ANOTHER v. NEELA BAI AND OTHERS), the appeal was filed by the District Collector challenging the compensation amount, but no appeal or crossobjection for enhancement had been filed. The Division Bench enhanced the compensation and it was observed :-

"6. Even though the claimants have not preferred an appeal or filed any cross-objection, we do not regard that as an unsummonable hurdle coming in the way of award of a larger sum. We find that the award of larger sum was justified. In this case as we have noticed earlier, claimants are entitled to the award of Rs.4,70,000 on the basis of the evidence placed before the court.

The claimants shall pay additional court fee on the amount in excess of the amount determined by the Claims Tribunal, namely, the difference between

Rs.4,70,000 and Rs.3 ,53,400. The claimants are also entitled to interest at the rate of 12 per cent on the amount awarded as now enhanced by us from the date of the claim till date of payment."

25. In 2000 ACJ 1292 (KRISHNA DEVI AND OTHERS v. HARDEV SINGH AND OTHERS), it was observed by the Division Bench of Punjab & Haryana High Court that cross-objection can be filed in the appeal filed by the Insurance Company. By relying upon the decisions reported in AIR 196 3 SC 1516 (PANNA LAL v. STATE OF BOMBAY), Madras Full Bench decision in AIR 1950 MADRAS 379 (VADLAMUDI VENKATESWARLU v. PAVIPATI RAMAMMA), AIR 1988 SC 54 (MAHANT DHANGIR v. MADAN MOHAN) and 1982 ACJ (Supp) 610 (GUJARAT) (NATIONAL INSURANCE CO. LTD. v. D IWALIBEN), it was observed :-
"18. In view of these decisions it must be held that crossobjections filed by the appellants should have been entertained by the learned single Judge because their claims were intermixed with the liability of the insurance company and in any case the learned single Judge should have invoked provisions of Order XLI, rule 33 for entertaining the claim made by the appellants for award of higher compensation and also for grant of higher interest."

26. In 2001 ACJ 1423 (JAI SINGH v. LALMUNI DEVI AND ANOTHER), the Division Bench of Patna High Court observed as follows :-
"9. The next point, which arises for consideration is: whether the cross-appeal by the claimant for enhancement of compensation was maintainable. It is the stand of the learned counsel for the vehicle owner that the Misc.Appeal No.520 of 1991 (R) had been preferred by the insurance company and, therefore, no cross-objection/cross-appeal filed by the claimant for the enhancement of compensation could have been entertained. This point was not pressed by the vehicle owner before the learned single Judge in the Misc. Appeal No.520. It is suffice to say that there is no specific prohibition under the Act to entertain the cross-objection/cross-appeal filed by the claimant under Order 41, rule 2 of the Civil Procedure Code for enhancement of compensation and under the provision of Order 41, rule 33 of the Code, the appellate court can make appropriate order to do complete justice between the parties and to decide the matter in a way that a claimant is given just compensation. (Ref: Manjit Singh v. Rattan Singh, 1997 ACJ 12 04 (HP); Nirmal Singh v. C.M. Jaya, 1997 ACJ 44(Delhi)).
10. Learned counsel for the appellant vehicle owner, on the other hand, has relied on a decision of a learned single Judge of this court in New India Assurance Co. Ltd. v. Maimun Nisha, 1998 ACJ 50 (Patna), in support of the contention that the cross-objection by a claimant under Order 41, rule 22 of the Code of Civil Procedure could not be entertained in an appeal filed by the insurance company. In that case, the quantum of compensation had not been challenged by the insurance company and it had only challenged its liability. But in the instant case, the insurance company has challenged its liability as well as the quantum of compensation. It has been held in that case that where only the liability of the insurance company has been

challenged and quantum which has become final between the co-respondents, cannot by way of cross-objection, be challenged in the appeal. The aforesaid decision in Maimun Nisha (supra) has no application to the facts of the present case."

27. In II (2000) ACC 648 (UNITED INDIA INSURANCE CO. LTD. v. SMT. SHARDA & OTHERS), a learned single Judge of Rajasthan High Court has held that even if the cross-objection in an appeal filed by the Insurance Company may not be maintainable, the principle under Order 41 Rule 33 can be invoked, and accordingly compensation was enhanced and the Insurance Company was directed to pay the entire amount.

28. In 2003 ACJ 1526 (NEW INDIA ASSURANCE CO. LTD., v. GUDDI & OTHERS), the Madhya Pradesh High Court applied the principles of Order 4 Rule 33 for granting higher compensation to the claimants.

29. Similar principle was adopted by Rajasthan High Court in 2003 ACJ 1783 (RAJASTHAN STATE ROAD TRANSPORT CORPORATION v. PISTA AND OTHERS), Himachal Pradesh High Court in AIR 1997 HIMACHAL PRADESH 21 (MANJIT SINGH v. RATTAN SINGH & OTHERS) and Madhya Pradesh High Court in AIR 1986 M.P. 21 (SONARAM v. JAIPRAKASH AND OTHERS).

30. At this stage, it is appropriate to refer to some of the decisions arising out of Claim Cases taking the view that a Cross Objection is not maintainable in the appeal filed by the Insurer.

31. In 1993 ACJ 486 (UNITED INDIA INSURANCE COMPANY LTD. v. RAJAMMAL AND OTHERS), the award was for a sum of Rs.76,800/-. Even though the limit of the liability of the insurer was Rs.50,000/-, the Tribunal had not indicated accordingly and it observed that the owner and the insurer are jointly and severally liable. The appeal was filed by the insurer only on the ground that its liability was only limited to Rs.50,000/-. The Division Bench of the High Court accepted the aforesaid contention. The claimants had filed cross objection for enhancement of compensation to Rs.1,54,000/-. While upholding the contention of the appellant to the effect that its liability was limited to Rs.50,000/- only, it was held that such cross objection against the insurance company was not maintainable.
While coming to the aforesaid conclusion, the Division Bench also placed reliance upon a decision of Kerala High Court in 1983 ACJ 707 (Kerala) (STATE OF KERALA v. K.K. PADMAVATHI), which in turn had placed reliance upon a Full Bench decision of this Court reported in AIR 19 50 Madras 379 (VENKATESWARLU v. RAMMA), wherein it had been observed as follows :-
 One cannot treat an objection by a respondent in which the appellant has no interest as a cross-objection. The appeal is by the appellant against a respondent. The cross-objection must be an objection by a respondent against the appellant.
The Division Bench also placed reliance upon the decision of the Supreme Court reported in AIR 1963 SC 1516 (PANNA LAL v. STATE OF BOMBAY), wherein the aforesaid Full Bench decision had been approved. The Division

Bench also extracted the following observation from 1983 ACJ 707 (cited above) in reference to an earlier Division Bench decision of Kerala High Court :
"As early as in 1960 a Division Bench of this court in Abubacker v. Abdulrahiman, 1960 KLT 348, had taken the view that memorandum of cross-objections which is directed solely against co-respondents, not the appellants, is not maintainable under Order 41, rule 22. The law is well settled that as a general rule a respondent can file cross-objection only against an appellant; and it is only in exceptional cases where the decree proceeds on a common ground or the interest of the appellant is intermixed with that of the respondent that a respondent could be allowed to urge a cross-objection against a corespondent."

32. The aforesaid decision of Madras High Court was also subsequently followed by another Division Bench of this Court reported in 1996 ACJ 1260 (UNITED INDIA INSURANCE CO. LTD. v. M.R. SUBRAMANIAN AND ANOTHER). There the only question which was raised by the Insurance Company was again relating to the limit of liability of the Insurance Company, which was only Rs.5,000/- as per the expressed terms of the policy. However, the Tribunal had awarded a sum of Rs.49,000/- to be paid by the Insurance Company. The contention of the insurer that its liability was only Rs.5,000/-, was accepted and it was directed that the balance amount is to be paid by Respondent No.2. However, the claimant had also filed cross objection claiming higher amount. The objection relating to maintainability of such a cross objection was upheld by the Division Bench by following the earlier Division Bench decision reported in 1993 ACJ 486 and AIR 1963 SC 1516.

33. We do not think that the principle of the aforesaid decisions of the Madras High Court would be attracted to the present case. From the Division Bench decisions it is apparent that the maximum liability of the Insurance Company was limited and accordingly the appeals were allowed to that extent. In case, there would have been any further enhancement of compensation, it is obvious that the excess amount would have been paid by the owner and not by the Insurance Company. In other words, the Memorandum of cross objection was in effect only against the co-respondent, and the appellant, namely the Insurance Company would not have been affected by any order passed in the cross-objection, allowing such cross objection. To be precise, since the cross objection was solely against the co-respondent, obviously such cross objection could not be maintained. As observed by the Supreme Court in AIR 1963 SC 1516 (cited above) or in 1960 KLT 348 (cited above), it was not a case where the decree proceeded on a common ground or the interest of the appellant was intermixed with that of the respondent, and therefore, one respondent could not be allowed to raise cross objection against another co-respondent. In paragraph 4 of the decision reported in 1993 ACJ 486, it is important to note, it was emphasised that the Insurance Company was neither questioning the finding regarding negligence nor the findi ng regarding the quantum of compensation arrived at by the Tribunal.

34. In the present case, the Insurance Company has challenged the findings regarding quantum. It is another matter that such contention raised by the Insurance Company cannot be accepted in view of the fact that permission as envisaged under Section 170 of the Act had not been specifically

obtained. However, in the present case, the Tribunal has observed that the entire compensation amount is to be paid by the Insurance Company. Obviously if there would be any enhancement, such amount has to be paid by the Insurance Company and not by the owner and ultimately, it is the Insurance Company which would be made liable. In that sense, it cannot be said that the cross objection in the present case is directed only against the co-respondent, namely the owner of the vehicle. On the other hand, the cross objection is on a common question where the interest of the appellant is intermixed with that of the owner/respondent.

35. We would like to briefly summarise the conclusions from the above discussion :-

(1) Where the appeal is filed by the Insurance Company only on the ground envisaged under Section 149 of the Motor Vehicles Act, relating to liability of the insurer, and if by virtue of allowing the cross objection, the additional liability has to be borne by the owner, namely the co-respondent, such cross objection may not be maintainable as such cross objection would be effective against the co-respondent and not against the insurer/appellant.

(2) Where the Insurance Company files appeal challenging the award on merit, cross objection can be maintainable, provided the ultimate liability in respect of enhanced compensation is to be borne by the Insurance Company and not by the owner/co-respondent and the fact that the appeal of the Insurer is liable to be dismissed on the ground that permission envisaged under Section 170 of the Motor Vehicles Act is not obtained, shall not stand in the way of the claimant-respondent in filing Cross-Objection.

(3) Even where the cross objection is not filed, in appropriate case, the principle laid down under Order 41 Rule 33 of C.P.C. can be invoked.

36. Next comes the question of enhancement of the award. There cannot be any dispute that the injuries sustained by the claimantrespondent No.1 were serious which required three separate surgical interventions and prolonged hospitalisation. The unchallenged evidence indicates that claimant-respondent No.1 is also required to undergo treatment in future. Even though the Tribunal has taken into consideration the medical expenses and other expenses already incurred by the claimant, it has not made any provision for future inevitable expenditure to be incurred by the claimant/respondent No.1 on account of future treatment.

37. Having regard to all the facts and circumstances of the case, we feel that award of Rs.4,95,000/- is on the conservative side and we feel interest of justice would be served by enhancing the compensation by a further sum of Rs.1,00,000/-. Such amount should be paid by the Insurance Company

within a period of sixty days from to-day. However, we make it clear that in case such amount is not paid within sixty days, thereafter it will carry interest at the rate of 9% per annum.

38. Accordingly, the appeal filed by the Insurance Company is dismissed and the Cross Objection filed by the Respondent No.1 is allowed, however, there shall be no order as to costs.

Index : Yes
Internet : Yes

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To

1. United India Insurance Co. Ltd.,
Mosque Street,
Tindivanam 604 001.

2. The Sub Court,
Cuddalore.

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